



Department of Transportation

National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0053; Notice 2]

BMW of North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of Petition.

SUMMARY: BMW of North America, Inc. (BMW) has determined that certain model year (MY) 2015 MINI Cooper, Cooper S hardtop 2 door, and Cooper S hardtop 4 door passenger cars do not fully comply with paragraph S4.2.3(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 226, *Ejection Mitigation*. BMW has filed an appropriate report dated May 20, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

ADDRESSES: For further information on this decision contact Karen Nuschler, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5829, facsimile (202) 366-3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), BMW submitted a petition for an exemption from the notification and remedy requirements

of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on September 1, 2015 in the Federal Register (80 FR 52845). No comments were received. To view the petition, and all supporting documents log onto the Federal Docket Management System (FDMS) website at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2015-0053."

II. Vehicles Involved: Affected are approximately 4,208 MY 2015 MINI Cooper, Cooper S hardtop 2 door, and Cooper S hardtop 4 door passenger cars manufactured from February 25, 2015 to April 24, 2015.

III. Noncompliance: BMW explains that written information describing the ejection mitigation countermeasure installed in the vehicles was not provided to the vehicle consumers as required by paragraph S4.2.3(a) of FMVSS No. 226.

IV. Rule Text: Paragraph S4.2.3 of FMVSS No. 226 requires in pertinent part:

S4.2.3 *Written information.*

(a) Vehicles with an ejection mitigation countermeasure that deploys in the event of a rollover must be described as such in the vehicle's owner manual or in other written information provided by the vehicle manufacturer to the consumer. ...

V. Summary of BMW's Arguments: BMW stated its belief that the subject noncompliance in the affected vehicles is inconsequential to motor vehicle safety. A summary of its reasoning is provided as follows. Detailed explanations of its reasoning are included in its petition:

1. The vehicles are equipped with a countermeasure that meets the performance requirements of FMVSS No. 226.
2. The owner's manuals contain a description of the ejection mitigation countermeasure in the context of side impact.
3. The owner's manuals contain precautions related to the [ejection mitigation] system even though not required by FMVSS No. 226.
4. The [ejection mitigation] system uses the FMVSS No. 208 required readiness indicator, as allowed by FMVSS No. 226.
5. BMW has not received any customer complaints due to this issue.
6. BMW is not aware of any accidents or injuries due to this issue.
7. NHTSA may have granted similar manufacturer petitions re owner's manuals.
8. BMW has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 226.

In summation, BMW believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt BMW from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA'S DECISION:

NHTSA's Analysis: NHTSA believes that while written information was not provided to vehicle owners describing the installed head air bags (side curtain) as vehicle occupant ejection mitigation countermeasures that deploy in the event of a rollover, the owner's manuals for the affected vehicles otherwise effectively describe, and illustrate the location of, the head air bags. NHTSA also believes that the status of the head air bags is monitored by the vehicle's air bag readiness indicator intended to show operational readiness of the entire airbag system. Therefore, drivers should be alerted to a malfunction of the head air bags that are intended to provide ejection countermeasures in the event of a rollover event, and occupant protection in the event of a significant side impact event.

BMW has also reported that they have not received any complaints from vehicle owners regarding the subject noncompliance and that vehicle production was corrected so that the noncompliance did not occur in subsequent vehicles.

NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that BMW has met its burden of persuasion that the subject FMVSS No. 226 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, BMW's petition is hereby granted and BMW is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that BMW no longer controlled at the time it determined that the noncompliance existed. However, the Granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after BMW notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at
49 CFR 1.95 and 501.8)

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